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England. - Parliament [Bills. - II George II.]

Read 7 Feb. 1759
Enacted 32 Geo II. Private Acts, c. 57.

A BILL *for Dividing and Inclosing certain open Arable Fields and Downs in the Manor of* Bishops Waltham, *in the County of* Southampton.

Whereas there are in the Manor of *Bishops Waltham*, in the County of *Southampton*, several open arable Common Fields, and Downs, called *Ashton Field*, *Pilard Field*, *Oat Field*, *Stephen's Castle Down*, and *Woodcot Down*, containing, by Estimation, Five hundred and Twenty Acres, or thereabouts: Preamble.

And whereas the Right Reverend Father in God *Benjamin* Lord Bishop of *Winchester*, in Right of his Church and See of *Winchester*, is Lord of the said Manor of *Bishops Waltham*, in the said County of *Southampton*:

And whereas *James Upsdall*, *Daniel Brown*, *Richard Trodd*, *Walter Barfoot*, *Richard Eyles*, *Samuel Stubbington*, *Thomas Spearing*, *David Prowting*, *Thomas Dipnal*, *William Horner*, *William Aylen*, *Catharine Friend*, and others, are the Owners and Proprietors of the Lands and Grounds in the said open arable Common Fields, and Downs, and have a Right of Common thereon:

And whereas the Lands and Grounds, belonging to the several Proprietors in the said Fields and Downs, lie intermixed and dispersed, and it would be advantageous to the several Proprietors of, and the Persons intitled to Right of Common in and upon, the said Fields and Downs, to have the same divided and inclosed, and a specifick Share allotted to each Proprietor, according to his or her respective Interest therein: **But** as such Division and Inclosure cannot be effectually made and established, without the Authority of Parliament;

May it therefore please Your MAJESTY;

That it may be **Enacted**; **And be it Enacted**, by the KING's most Excellent MAJESTY, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That

Commissioners.

and their Successors, to be elected in Manner herein after-mentioned, shall be, and they are hereby appointed, Commissioners for setting out, dividing, allotting, and inclosing, the said Fields and Downs, and for putting this this Act in Execution.

Survey to be made.

And, for the more certain Division of the said Lands, **Be it further Enacted**, by the Authority aforesaid, That a true and distinct Survey shall be made of the said Fields and Downs, before the or as soon thereafter as conveniently may be, by the said Commissioners, or any or more of them, or by such Person or Persons as they, or any or more of them, shall appoint; and such Survey shall be reduced into Writing, and the Number of Acres, Roods, and Perches, belonging to each Proprietor, shall be therein specified and described; and such Survey shall be laid before the said Commissioners, or any or more of them, at some or one of their Meetings to be held in pursuance of this Act.

Allotments to be made.

And be it further Enacted, by the Authority aforesaid, That the said Commissioners, or any or more of them, shall, and they are hereby authorized and required, at any time or times after the said Survey shall have been laid before them, and on or before the or as soon thereafter as conveniently may be, to divide, set out, and allot, the said Fields and Downs, unto and among the Persons, who, at the Time of making such Division, shall be intitled to Lands, Property, and Right of Common, in the said Fields and Downs, in proportion to their several and respective Shares, Interests, and Right of Common, therein, subject to the Rules, Orders, and Directions, herein contained and authorized to be established concerning the same.

Commissioners to give no undue Preference.

Provided always, and be it further Enacted and Declared, by the Authority aforesaid, That nothing in this Act contained shall impower the said Commissioners, or any of them, to give any undue Preference to any of the Parties interested in the said intended Division, in respect to their Shares or Allotments; but that the said Commissioners, in making such Allotments, shall have due regard to the Quality as well as Quantity of the Lands, and also the Right of Common, and other Property belonging to

to each Person interested, and the Quality as well as Quantity of the Lands to be allotted in lieu thereof.

And be it further Enacted, by the Authority aforesaid, That the said Commissioners, or any or more of them, shall and may set out and appoint such public and private Roads or Ways, and also such Ditches, Fences, Drains, Bridges, Gates, and Stiles, as they shall think convenient, in, over, and upon, the Inclosures to be made by virtue of this Act, so as that all such public Roads shall be broad at the least, between the Ditches or Fences; and such public Roads shall at all times for ever thereafter be repaired and kept in Repair, in such manner as other public Highways are by Law directed to be repaired; and that, after the making the Roads and Ways so set out and appointed, it shall not be lawful for any Person or Persons to use any other Roads or Ways either public or private, over or through the said new Inclosures, on Foot, or with Horses, Cattle, or Carriages; and that all the former Roads and Ways, which shall not be set out and appointed as the Roads and Ways through the said intended Inclosures, shall be deemed Part of the Lands to be inclosed, and shall be divided and allotted accordingly, as Part of such Lands, and that all the private Ways, Ditches, Fences, Drains, Bridges, Gates, and Stiles, so to be set out and appointed as aforesaid, shall be made, and at all times thereafter repaired, cleansed, maintained, and kept in Repair, by such Person or Persons, and in such manner, as the said Commissioners, or any or more of them, shall, by their Award or Instrument, herein after-mentioned, order, direct, or appoint.

Commissioners to set out Roads.

And be it further Enacted, by the Authority aforesaid, That within the Space of Calendar Months, after the Division and Allotments of the said Fields and Downs, shall be completed and finished, the said Commissioners, or any or more of them, shall form and draw up an Award or Instrument thereof in Writing, which shall express the Quantity and Contents, in Statute Measure, of the Acres, Roods, and Perches, contained in the said Fields and Downs, so intended to be inclosed as aforesaid, and the Quantity and Contents of each and every Part and Parcel thereof assigned and allotted to each of the Parties intitled to Lands, Common Right, or any other Property within the same, and a Description of the Situation, Buttals, and Boundaries, of such Parcels and Allotments respectively, and proper Orders and Directions for and concerning the Laying out and Making of the public Roads and the Breadth thereof, and for and concerning the laying out, making, maintaining, cleansing, and keeping in Repair, the private Roads and Ways, Fences, Ditches, Drains, Bridges, Gates, and Stiles, in, upon and over the said intended Inclosures: And also all such Orders, Regulations, and Determinations, as are in or by this Act mentioned, directed, or required, to be made and established, and such other Orders and Regulations as shall be necessary or proper, conformable to the true Tenor of this Act, for the more easy, convenient, and effectual Execution thereof, and for preventing all Difficulties and Disputes, in relation to the Matters herein contained; which said Award or Instrument shall be fairly ingrossed upon Parchment, and signed and sealed by the said Commissioners, or any or more of them, and shall within Calendar Months next after

Commissioners to make their Award;

to be inrolled, and a Copy allowed as Evidence.

after the ſame ſhall be ſo ſigned and ſealed as aforeſaid, be inrolled by the Clerk of the Peace for the County of *Southampton*; and a true Copy thereof ſhall at all times thereafter be admitted in all Courts whatſoever as legal Evidence of the ſame; and that the ſeveral Allotments and Diviſions, and all Orders, Directions, Regulations, and Determinations, ſo to be made as aforeſaid, in and by ſuch Award or Inſtrument, ſhall be binding and concluſive unto and upon all Perſons intitled to or claiming any Lands, Common Right, or other Property whatſoever, in the ſaid Fields and Downs; and that the ſeveral Allotments to be made as aforeſaid to the reſpective Proprietors, and Perſons intereſted, ſhall be in full Bar of, and Compenſation for, all Lands, Intereſt, Common Rights, and Property whatſoever in the ſaid Fields and Downs; and that all, and all manner of Right of Common, or Common of Paſture, upon, for, and in reſpect of, the ſaid Fields and Downs, ſhall, immediately after the Execution of ſuch Award or Inſtrument, ceaſe, and be for ever extinguiſhed.

Allotments to be incloſed within a certain Time.

And be it further Enacted, by the Authority aforeſaid, That within the Space of Calendar Months after the Execution of ſuch Award or Inſtrument as aforeſaid, the ſeveral Parcels of Land thereby allotted, ſhall be incloſed, hedged, ditched, or fenced; and ſuch Incloſures, Hedges, Ditches, and Fences, at all times thereafter, ſhall be repaired and maintained in ſuch manner as the ſaid Commiſſioners, or any or more of them, ſhall, in ſuch Award or Inſtrument, order and direct.

Convenient Openings to be left for a certain Time.

Provided always, and it is hereby further Enacted, by the Authority aforeſaid, That convenient Openings ſhall be left in the ſaid Fences and Incloſures for the Space of Calendar Months next enſuing the Execution of the ſaid Award or Inſtrument, for the Paſſage of Cattle, Carts, and Carriages, through the ſame, unleſs the ſeveral Parties intereſted therein ſhall agree that the ſame ſhall be ſooner made up and incloſed.

Nothing to make void any Will or Settlement.

Provided alſo, and it is hereby further Enacted, That nothing in this Act contained ſhall revoke, make void, alter, annul, or any-ways affect any Settlement, Deed, Will, or Leaſe whatſoever, or to prejudice any Perſon or Perſons having any Right or Claim of Dower, Jointure, Portion, Debt, Rent, Incumbrance, or other Demand, out of, upon, or affecting, any of the Lands ſo intended to be incloſed as aforeſaid, or any Part or Parcel thereof; but that the Lands to be allotted ſhall, immediately after the making ſuch Diviſion, be, remain, and enure, and be held and enjoyed, and the ſeveral Proprietors to whom the ſame ſhall be allotted, ſhall, from thenceforth, ſtand and be ſeiſed and poſſeſſed thereof reſpectively, ſubject and liable to the ſame Uſes, and for ſuch and the ſame Eſtates and Intereſts, and ſubject to ſuch and the ſame Wills, Leaſes, Powers, Proviſoes, Limitations, Remainders, Truſts, Charges, Rents, Incumbrances, and Demands, as he, ſhe, or they reſpectively ſhould and would have ſtood ſeiſed of and in his, her, or their Lands, Intereſt, or Property, in the ſaid Fields and Downs, in caſe this Act had not been made; any thing herein contained to the contrary notwithſtanding.

And

And be it further Enacted, by the Authority aforesaid, That the said Commissioners, or any or more of them, shall, and they are hereby required to give, or cause public Notice to be given, in the Parish Church of *Bishops Waltham* aforesaid, upon some *Sunday*, immediately after Divine Service, of the Time and Place of their First Meeting, and every subsequent Meeting, for the Execution of this Act, at least Days before any such Meeting shall be held (Meetings by Adjournment only excepted).

Commissioners to give Notice of their Meetings.

And be it further Enacted, by the Authority aforesaid, That if any One or more of the Commissioners appointed by this Act, or who shall have been elected in the manner herein after-mentioned, shall, before the Execution of the said Award or Instrument, die or refuse to act, the surviving or remaining Commissioners, or any or more of them, shall, from time to time, by Writing under their Hands and Seals, within Calendar Months next after such Death or Refusal shall happen or be known, appoint One other Commissioner, not interested in the said intended Inclosure, instead of each Commissioner so dying or refusing to act; and every such Commissioner so to be appointed, shall have the like Authority to act in the Execution of this Act, as the Commissioner in whose Place he shall succeed was vested with.

Commissioners dying, or refusing to act, others to be chosen.

And be it further Enacted, by the Authority aforesaid, That every Person intitled to any Allotment or Allotments to be made as aforesaid, shall and is hereby required to accept such Allotment or Allotments within the Space of Calendar Months next after the Execution of the said Award or Instrument, and public Notice given in the said Parish Church on a *Sunday*, immediately after Divine Service, and also Notice in Writing affixed on the Door of the said Church for that Purpose, signed by the said Commissioners, or any or more of them (which Notices the said Commissioners, or any or more of them, are hereby required to cause to be so published and given); and every Person who shall neglect or refuse to accept any such Allotment within the Time before-mentioned, shall be totally excluded from having or receiving any Benefit or Advantage by this present Act; and also from any Estate, Interest, and Right of Common whatsoever, in, to, or in respect of, the Lands allotted to any other Person or Persons, by virtue of this Act.

Time of Acceptances of Allotments.

Provided always, and it is hereby further Enacted and Declared, by the Authority aforesaid, That the Guardians, Husbands, Trustees, Committees, or Attornies, of any Person or Persons being Minors, or otherwise incapable by Law to accept any such Allotment, shall be, and are hereby enabled and required to accept thereof, for the Use of such Person or Persons; and also that any Person or Persons intitled to any Allotment or Allotments, as Tenant or Tenants for Life or Lives, shall be, and is and are hereby respectively enabled to take and accept of such Allotment or Allotments; and also that any Person or Persons intitled to any Allotment or Allotments, in Remainder or Expectancy, upon any precedent particular Estate, upon Neglect or Refusal for the Space aforesaid, of any Tenant or Tenants in Possession, or any Person intitled to such precedent particular

Trustees to accept Allotments for Persons incapable.

Eſtate, ſhall be, and is and are reſpectively hereby enabled to accept of any ſuch Allotment or Allotments, in lieu and inſtead of any ſuch Tenant or Perſon ſo intitled, and neglecting or refuſing as aforeſaid, and every ſuch Acceptance reſpectively ſhall be and is hereby declared to be valid and effectual; any thing herein contained to the contrary notwithſtanding.

Provided alſo, That the Non-claim or Non-acceptance of any Guardian, Huſband, Truſtee, or Committee, ſhall not exclude or prejudice the Claim or Acceptance of any Infant, Lunatic, Ideot, Feme-covert, or other Perſon under any Incapacity as aforeſaid, who ſhall claim or accept within Calendar Months after ſuch Incapacity ſhall be removed, or of any Perſon or Perſons, intitled as Heir or in Remainder, after the Death of any Perſon dying under ſuch Incapacity, who ſhall claim or accept within Calendar Months, after his, her, or their Right or Intereſt ſhall have accrued or be known to have accrued.

How the Expences of Surveying, &c. are to be paid and recovered.

And be it further Enacted, by the Authority aforeſaid, That all the Charges and Expences incident to and attending the obtaining of this Act, and of the ſurveying, dividing, and allotting the Lands hereby intended to be incloſed, and of the preparing and inrolling the ſaid Award or Inſtrument, and of the ſaid Commiſſioners, and alſo all other neceſſary Expences in or in relation to the Execution of this Act, ſhall be defrayed by the ſeveral Proprietors of Lands, and Perſons having Right of Common in and upon the ſaid Fields and Downs, in proportion to their ſeveral Allotments, which Proportions ſhall be ſettled and adjuſted by the ſaid Commiſſioners, or any or more of them: And in caſe any Perſon or Perſons ſhall refuſe or neglect to pay his, her, or their Proportion or Proportions, of ſuch Charges or Expences, within the Time to be limited by the ſaid Commiſſioners, or their Succeſſors, or any or more of them, to ſuch Perſon or Perſons as they, or any or more of them, ſhall appoint to receive the ſame, then the ſaid Commiſſioners, or their Succeſſors, or any or more of them, ſhall and may by Warrant or Warrants, under their Hands and Seals, directed to any Perſon or Perſons whomſoever, cauſe the ſame to be of the Goods and Chattels of the Perſon or Perſons ſo neglecting or refuſing to pay the ſame; rendering the Overplus (if any) on Demand, to the Owner or Owners of ſuch Goods and Chattels, after deducting the Coſt and Charges of taking or making ſuch

A Saving of Rights to the Lord of the Manor.

Provided always, and be it further Enacted, by the Authority aforeſaid, That this Act ſhall not prejudice the Rights of the Lord of the ſaid Manor, or of any future Lord or Lords of the ſaid Manor; in or to the Seignory, Royalties, Rights, and Services, incident and belonging to the ſaid Manor; but that ſuch Lord or Lords, for the Time being, and all Perſons claiming, and to claim, under or in Truſt for him or them, as Lord or Lords of the ſaid Manor, ſhall at all Times hereafter, hold and enjoy all Rents, Services, Rights, Royalties, Courts, Perquiſites and Profits of Courts and all other Royalties, Privileges, and Juriſdictions, to the ſaid Manor, or to the Lord or Lords thereof belonging, in as full, ample, and

and beneficial Manner, to all Intents and Purpoſes, as he or they might have held and enjoyed the ſame, in caſe this Act had not been made.

Saving always to the KING's moſt Excellent MAJESTY, his Heirs and Succeſſors, and to all and every other Perſon and Perſons, Bodies Politic or Corporate, his, her, and their Heirs, Succeſſors, Executors, and Adminiſtrators (Other than and except thoſe meant and intended to be barred by this Act); All ſuch Eſtate and Intereſt as they, every or any of them, had and enjoyed of, in, to, or in reſpect of, the ſaid Fields and Downs, before the Paſſing of this Act, or could or might have had or enjoyed in caſe the ſame had not been made; but no ſuch other Perſon or Perſons, Bodies Politic or Corporate, his, her, or their Heirs, Executors, Adminiſtrators, or Succeſſors, ſhall have Power to diſturb any of the Allotments to be made in purſuance of this Act; but ſhall accept the reſpective Allotments which ſhall be made in lieu of the Lands, Common Rights, or other Intereſt, which he, ſhe, or they, would have been intitled to, in caſe this Act had not been made.

General Saving to the King, and others.

A BILL *for Dividing and Inclosing certain open Arable Fields and Downs in the Manor of* Bishops Waltham, *in the County of* Southampton.